IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 14031 of 1997

Between:

1 Divisional Electrical Engineer, South Central Railway, Guntakl
2 Divisional Railway Manager, South Central Railway, Guntkal
3 Sr. Divisional Personnel Officer, South Central Railway, Guntakal

..... PETITIONERS

AND

1 V. Ramamoorthy, s/o. B. Vysasa Rao, Retired Railway Employee, Tirupati, D.No. 51, Womens Hospital Road, Chittoor Dist.
2 Presiding Officer, Labour Court, Ananthapur,

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction more particularly one in the nature of writ of Certiorari by calling for the records in M.P.No.30 of 1993 on the file of Industrial Tribunal- - Cum- Labour Court, Ananthapur, dated 30-9-1996 and quash the same.

Counsel for the Petitioners: MR.DANTU.SRINIVAS

Counsel for the Respondent No.1: MR. M. JAGANNATH SARMA .

Counsel for the Respondent No.2: THE GP FOR LABOUR

The Court made the following ORDER:

This writ petition is filed by the Railways represented by its Officers, aggrieved by the order passed by the Industrial Tribunal-cum-Labour Court, Ananthapur, in M.P.No.30 of 1993, under which the present petitioners were directed to pay a sum of Rs.34,305/- to the first respondent towards overtime allowance.

2. It is stated that the first respondent-workman is a retired employee of the petitioner-organization as Electrical Fitter Grade-I. According to the first respondent, while he was working as Grade-I Fitter at Tirupati, during the period 1987 to 1990, he worked over time during the night shifts from 17.00 hours to 05.00 hours i.e., for 12 hours instead of 8 hours regular duty. As no over time allowance was paid, he has approached the Labour Court. The claim of the first respondent was disputed by the Management and accordingly pleadings were filed and both oral and documentary evidence was adduced. The Labour Court, after considering the evidence, elaborately held that the claim of the first respondent is true and is entitled for over time allowances and accordingly computed the over time allowances and directed the petitioners to pay the said amount within a period of three months, failing which, the same shall carry interest at 6% per annum. Aggrieved by that, the petitioners filed the present writ petition.

3. The learned counsel for the petitioners contended that the Labour Court had committed grave error in ordering payment towards the over time allowances. It was disputed by the petitioners that the competent authority, who is entitled to order over time, did not order the first respondent to work over time. Similarly, there was no proper evidence showing that the first respondent had, in fact, worked for over time so as to allow the over time allowances. The learned counsel also contended that the log book, showing the working times of various employees on the shifts, was destroyed. However, on the premise that the same was produced by the first respondent, it was relied upon even though there was no proper evidence as to how he came into its possession and produced it. It is also contended that even other evidence, both oral and documentary, shows that there is no acceptable evidence on record showing that the first respondent had worked over time in order to allow his petition for over time allowances. Therefore, the order passed by the Labour

Court is liable to be set aside.

4. The learned counsel for the first respondent-workman, on the other hand, sought to sustain the order. It is contended that it is the burden of the petitioners-Management to produce necessary register and other documents, which are in its custody, to disprove the claim of the first respondent showing that he did not work over time. The petitioners-Management did not produce any documents such as Log Book or proceedings showing the schedules. On the other hand, the first respondent himself produced the log book stating that he procured the same in the waste paper vendor shop. Further the other material evidence together with the documents produced by M.W.1 before the Labour Court show that M.W.1 has ordered the first respondent to work over time and accordingly he worked over time. Therefore, it is contended that the Labour Court has rightly appreciated the evidence and gave a categorical finding allowing the petition of the workman. He further contended that there are no merits warranting interference in the impugned order passed by the Labour Court.

5. From the rival contentions, the issue to be considered is whether the order passed by the Labour Court is legal and sustainable.

6. The first respondent-workman, who is the petitioner before the Labour Court, filed the petition under Section 33-C (2) of the Industrial Disputes Act (for short 'the Act') seeking a direction to the respondents therein to pay overtime wages from 17.09.1987 to 31.12.1990 computing the total amount at Rs.34,305/-. The claim of the workman was contested on various grounds. The contention of the Management was that there is no evidence showing that the workman had worked over time. Further, it was the contention of the Management that the competent authorities such as Divisional Personal Officer or the Senior Divisional Electrical Engineer did not pass any orders directing the workman to work over time. In the absence of any such orders from the competent authority, it is not open to the workman to claim that he had, in fact, worked over time and, therefore, entitled for over time allowances.

7. The workman himself was examined as WW.1 while marking exhibits W.1 to W.19. On behalf of the Management, M.W.1 and M.W.2 were examined and Exs. M.1 to M.4 were marked.

8. The Tribunal, basing on the material on record, relied upon Ex.W-16, Log Book, which was produced by the workman, though it was supposed to be in the custody

of the Management. Though, the log book was produced by the workman, its genuineness was not disputed. As per the said log book, the workman had worked for 12 hours during the night shifts and for 8 hours during the day time. Though it was claimed that the workman used to commute from Koduru to Tirupati, the said claim was rejected by the Management in view of Ex.W.18, a proceeding dated 17.09.1987, as per which the workman vacated his quarter at Koduru, which was much before the date from which the workman claims to have worked over time. The Labour Court also recorded a finding basing on the evidence of M.W.1, who admitted that the workman attended the duties for 12 hours during night shifts. Though it was contended that as per Ex.W.4, the Senior Officer, South Central Railway, Guntur issued duty roaster, the same was not filed. Though on behalf of the Management, Ex.M1, Over time Register, was relied upon, on verification of the said document, the Labour Court rejected the same as it was found stitched with cut ruled sheets from a register and it was not even serially numbered. Therefore, on appreciation of the entire evidence on record, including the admissions of M.W.1, the Labour Court accepted the claim of the workman and ordered payment of over time allowance for the period for which he worked over time. It was contended on behalf of the Management that the findings recorded by the Labour Court are not sustainable. But, no illegality or defects in the findings were shown on behalf of the Management. In the absence of any such illegalities or irregularities, the management is not entitled for the relief claimed in the writ petition.

9. The writ petition is accordingly dismissed as devoid of merits. The petitioners-Management is directed to pay the balance amount payable as per the orders of the Labour Court within a period of six weeks from the date of receipt of a copy of this order. No costs.

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S. Ananda Reddy, J

Date: 16.09.2004

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To

1. Presiding Officer, Labour Court, Ananthapur.
2. Two CCs to G.P. for Labour, High Court of A. P. Buildings, Hyderabad (OUT)
3. Two CD Copies